

**Assembly Bill No. 399**

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Passed the Assembly September 10, 2009

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*Chief Clerk of the Assembly*

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Passed the Senate September 8, 2009

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2009, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to amend Section 22708 of the Education Code, and to amend Section 20731 of, and to add Sections 20969, 75103.6, and 75605.1 to, the Government Code, relating to public employee benefits.

## LEGISLATIVE COUNSEL'S DIGEST

AB 399, Brownley. Public employee benefits.

(1) The Public Employees' Retirement Law (PERL) permits a member of the Public Employees' Retirement System (PERS) with less than 3 years of service who enters employment as a member of another public retirement system supported, in whole or in part, by state funds, within 6 months of leaving state service to elect to leave accumulated contributions on deposit in the retirement fund. The law provides that failure to make an election to withdraw accumulated contributions shall be deemed an election to leave accumulated contributions on deposit in the retirement fund.

This bill would require that a member who is permanently separated from all service covered by PERS, who is not in specified public service, and 70 years of age, be provided with an election to withdraw contributions or, if vested, an election to either apply for service retirement or withdraw contributions. The bill would require that failure to apply for service retirement or to make an election to withdraw contributions within 90 days be deemed an election to withdraw contributions. The bill would specify the method of distribution of contributions for members who cannot be located with reasonable diligence. The bill also would make technical changes.

(2) The State Teachers' Retirement System, the Public Employees' Retirement System, and the Judges' Retirement System and the Judges Retirement System II provide pension benefits based in part upon credited service. The Public Employees' Retirement Law provides that credit for service generally is accrued based upon service rendered and compensated in a fiscal year, and that time during which a member is absent without compensation is not allowed for computing service. The State Teachers' Retirement Law provides that a member's creditable service is

calculated in relation to his or her creditable compensation. The Judges' Retirement System II Law provides that service means the period of time that a judge received a salary and made contributions to the system by reason of holding office as a judge, as specified. Pursuant to various executive orders, state employees have been furloughed without compensation. Existing law, in effect until July 1, 2010, permits a judge or justice to elect to waive irrevocably a certain percentage of salary, and a judge or justice who does so is not obligated to appear for work on a day a court is closed pursuant to specified authority. That law prohibits this waiver from being deemed a reduction in salary or service for the purpose of providing retirement benefits, among others.

This bill would require, for members of the State Teachers' Retirement System, that the calculations of a retirement allowance for a state employee subject to mandatory furloughs include earnings, contributions, and compensation earnable that would have been reported had the employee not been subject to mandatory furloughs, and would require that the employer pay the cost of the increased service credit that results from these inclusions. The bill would also require that, for all retirement purposes, credit for service and compensation earnable for members of the Public Employees' Retirement System employed by the state that are subject to mandatory furloughs be based on the amount that would have been credited had the employee not been subject to mandatory furloughs. The bill would define mandatory furloughs in these regards.

The bill would further require, for the Judges' Retirement System and the Judges' Retirement System II, that calculations of retirement benefits and Extended Service Incentive Program benefits for any judge who voluntarily waives salary, as described above, include salary and contributions that would have been paid had the judge not done so, and that the state pay costs that result from the increased benefits and monetary credits.

*The people of the State of California do enact as follows:*

SECTION 1. Section 22708 of the Education Code is amended to read:

22708. (a) The calculations of retirement allowances under this part for state employees in the personal leave program shall

include credit for service that would have been credited had the employee not been in the personal leave program. The costs that result from the increased service credit shall be paid for by the employer in a manner prescribed by the system.

(b) The calculations of a retirement allowance under this part for a state employee subject to mandatory furloughs shall include earnings, contributions, and compensation earnable that would have been reported had the employee not been subject to mandatory furloughs. The employer shall pay the cost of the increased service credit that results from these inclusions in a manner prescribed by the system pursuant to Section 22909.

(c) For purposes of subdivision (b), “mandatory furloughs” means time during which a member identified below is directed to be absent from work without pay because of an Executive order in the 2008–09 and 2009–10 fiscal years:

(1) A person subject to an Executive order requiring a mandatory furlough for state employees.

(2) A person who is excepted from the definition of “state employee” in subdivision (c) of Section 3513, or who is an officer or employee of the executive branch of state government who is not a member of the civil service, and who is subject to an Executive order requiring a mandatory furlough for state employees.

SEC. 2. Section 20731 of the Government Code is amended to read:

20731. (a) Notwithstanding any other provision of this part, a member who is credited with less than the years of service specified in Article 1 (commencing with Section 21060) of Chapter 12 who enters employment as a member of a public retirement system supported, in whole or in part, by state funds, including the University of California Retirement System, or as a member of a county retirement system, within six months of leaving state service, shall have the right to elect to leave accumulated contributions on deposit in the retirement fund. Failure to make an election to withdraw accumulated contributions shall be deemed an election to leave accumulated contributions on deposit in the retirement fund. This section shall also apply to a member who is subject to Section 21076, except that no election to leave contributions on deposit is required for service that is subject to Section 21076.

(b) (1) An election to allow accumulated contributions to remain in the retirement fund may be revoked by the member at any time, except any of the following:

(A) While the member is employed in state service in a position in which the member is not excluded from membership with respect to that service.

(B) While the member is in service as a member of a public retirement system supported, in whole or in part, by state funds, including the University of California Retirement System.

(C) While the member is in service, entered within six months after discontinuing state service, as a member of a county retirement system.

(2) All accumulated contributions in a member's account up to the time of revocation shall be distributed in accordance with an election pursuant to Section 20735.

(3) A member who is permanently separated from all service covered by the system, who is not subject to paragraph (1), and who attains 70 years of age shall be provided with an election to withdraw contributions or, if vested, an election to either apply for service retirement or to withdraw contributions. Failure to apply for service retirement or to make an election to withdraw contributions within 90 days shall be deemed an election to withdraw contributions. If the person fails to either apply for service retirement or elect to withdraw contributions, or cannot, with reasonable diligence, be located, the accumulated contributions shall be distributed in accordance with Section 21500.

(c) A member whose membership continues under this section is subject to the same age and disability requirements as apply to other members for service or for disability retirement. After the qualification of the member for retirement by reason of age, which shall be the lowest age applicable to any membership category in which the member has credited service, or disability, the member shall be entitled to receive a retirement allowance based upon the amount of the member's accumulated contributions and service standing to the member's credit at the time of retirement and on the employer contributions held for the member and calculated in the same manner as for other members, except that the provisions in this part for minimum service and disability retirement allowances shall not apply to the member, unless the member meets the minimum service requirements. If a basic death benefit

becomes payable under Article 1 (commencing with Section 21490), Article 2 (commencing with Section 21530), and Article 5 (commencing with Section 21620) of Chapter 14 because of death before retirement of a member, the average annual compensation earnable in the year preceding the date of termination of that service, rather than in the year preceding death, shall be used in computing the benefit under Articles 1, 2, and 5 of Chapter 14.

The provisions of this section, as it read prior to June 21, 1971, shall continue with respect to a member whose membership continued under this section on that date.

SEC. 3. Section 20969 is added to the Government Code, to read:

20969. (a) For all retirement purposes, including benefit eligibility and calculations of retirement allowances for members employed by the state that are subject to mandatory furloughs, credit for service and compensation earnable shall be based on the amount that would have been credited had the employee not been subject to mandatory furloughs.

(b) For the purposes of this section, “mandatory furloughs” means time during which a member identified below is directed to be absent from work without pay as a consequence of an Executive order in the 2008–09 and 2009–10 fiscal years:

(1) A state employee subject to an Executive order requiring a mandatory furlough for state employees.

(2) A person who is excepted from the definition of “state employee” in subdivision (c) of Section 3513, or who is an officer or employee of the executive branch of state government who is not a member of the civil service, and who is subject to an Executive order requiring a mandatory furlough for state employees.

(3) A state employee, a person who is excepted from the definition of “state employee” in subdivision (c) of Section 3513, or a person who is an officer or employee of the executive branch of state government who is not a member of the civil service, and whose employer is not under the direct executive authority of the Governor, and who is subject to a mandatory furlough imposed by his or her employer in response to encouragement in an Executive order.

(c) An employer of an employee identified in subdivision (b) shall notify the board of the terms and conditions of any mandatory furlough, including, but not limited to, the amount of mandatory furlough time imposed on employees during a reporting period and the date on which the mandatory furlough ends. The employer and the Controller shall provide any additional information as the board may require to implement this section.

SEC. 4. Section 75103.6 is added to the Government Code, to read:

75103.6. Calculations of retirement benefits and Extended Service Incentive Program benefits under this chapter for any judge in the Voluntary Waiver of Salary Program, as described in paragraph (4) of subdivision (b) of Section 68106, shall include salary and contributions that would have been paid had the judge not been in the program. The state shall pay the costs that result from the increased benefits and monetary credits.

SEC. 5. Section 75605.1 is added to the Government Code, to read:

75605.1. Calculations of retirement benefits and monetary credit under this chapter for any judge in the Voluntary Waiver of Salary Program, as described in paragraph (4) of subdivision (b) of Section 68106, shall include salary and contributions that would have been paid had the judge not been in the program. The state shall pay the costs that result from the increased benefits and monetary credits.

Approved \_\_\_\_\_, 2009

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*Governor*